way, culverts, catch basins or other means of channeling surface water within the development and over adjacent parcels of land.

- (2) Deed covenants which establish the easements or rights-of-way and provide for their continued maintenance.
- C. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that there will by no unreasonable alteration of natural drainage ways.



4. No Unreasonable Effect on Runoff/Infiltration Relationships

- **A. Preamble**. The Board recognizes that same developments cause unreasonable increases in stormwater runoff by decreasing the infiltrative capacity of the soils on a development site. The Board also recognizes that increases in stormwater runoff cause increased danger of flooding, the pollution of surface water bodies, and the depletion of groundwater resources.
- **B.** Scope of Review. In determining whether the proposed development will have an unreasonable effect on runoff/infiltration relationships, the Board shall consider all relevant evidence to that effect, such as evidence that:
 - (1) A stormwater management system will infiltrate, detain, or retain water falling on the site during a storm of an intensity equal to a twenty-five year, twenty-four hour storm such that the rate of flow of stormwater from the development does not exceed the rate of outflow of stormwater from the site prior to the undertaking of the development.
 - (a) Developments which convey stormwater directly into the ocean (excluding estuarine tidewaters) exclusively in manmade piped or open drainage systems are exempt from the requirements of this subsection.
 - (2) The physical, biological, and chemical properties of the receiving waters will not be unreasonably degraded by the stormwater runoff from the development site.
 - (3) The peak discharge of the receiving waters will not be increased as the result of the stormwater runoff from the development site for storms up to a level of intensity of a twentyfive year, twenty-four hour storm.
- **C. Submissions**. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable effect on runoff/infiltration relationships, including information such as the following, when appropriate:
 - (1) Evidence that the proposed stormwater management system has been designed by a professional engineer or other person duly qualified to undertake the design. The designer of the system will evaluate the effectiveness of various stormwater methods and develop and make available for review the hydraulic computations based on accepted engineering practices to demonstrate that the standards established under subsection B, above, will be met.

- (2) Evidence that the stormwater management system will take into consideration the upstream runoff which must pass over or through the development site. The system will be designed to pass upstream flows generated by a twenty-five year frequency through the proposed development without overloading the system or flooding areas not specifically planned for such flooding.
- (3) Evidence that the design of piped or open channel systems will be based on a ten year flow frequency without overloading or flooding beyond channel limits. In addition, the areas expected to be flooded by runoff of a twenty-five year frequency will be designated, and no structures will be planned within such area.
- (4) Evidence that, where permanent embankment-type storage or retention basins are planned, the basins will be designed in accordance with good engineering practice, such as outlined in the Soil Conservation Service Engineering Field Manual or other appropriate references.
- (5) Evidence that rights-of-way or easements will be designated for all components of the stormwater management system lying outside of established street lines.
- (6) Evidence that the developer will maintain all components of the stormwater management system until it is formally accepted by the municipality or a quasi-municipal district, or is placed under the jurisdiction of a legally created association that will be responsible for the maintenance of the system. The charter of such an association must be acceptable to the Board.
- (7) Evidence that the stormwater management system will be fully coordinated with project site plans, including consideration of street patterns, pedestrian ways, open space, building siting, parking areas, recreational facilities, and other utilities, especially sanitary wastewater disposal facilities.
- (8) When the construction of a development is to occur in phases, the planning of the stormwater management system should encompass the entire site which may ultimately be developed, and not limited to an initial or limited phases of the development.

NOTE: The following references may be of assistance to a developer in making the necessary computations and in designing the stormwater management system:

"Urban Hydrology for Small Watersheds", Technical Release No. 55, USDA, Soil Conservation Service, University of Maine, Orono, Maine.

"Water Resources Protection Measures in Land Development - A Handbook", Tourbier and Westmacott, University of Delaware Water Resources Center, Newark, Delaware.

D. Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that there will be no unreasonable effect on runoff/infiltration relationships.



5. Erosion and Sedimentation Control

- A. Preamble. The Board recognizes the importance of controlling erosion and sedimentation to protect water quality and wildlife and fisheries habitat. Additionally, the Board considers topsoil to be a natural resource which should be properly managed. Control of erosion and sedimentation is a concern both during and after construction activities.
- **B.** Scope of Review. In determining whether the developer has made adequate provision for controlling erosion and sedimentation, the Board shall consider all relevant evidence to that effect, such as evidence that:
 - (1) All earth changes will be designed, constructed, and completed in such a manner so that the exposed area of any disturbed land will be limited to the shortest period of time possible.
 - (2) Sediment caused by accelerated soil erosion will be removed from runoff water before it leaves the development site.
 - (3) Any temporary or permanent facility designed and constructed for the conveyance of water around, through, or from the development site will be designed to limit the water flow to a non-erosive velocity.
 - (4) Permanent soil erosion control measures for all slopes, channels, ditches, or any disturbed land area will be completed within fifteen calendar days after final grading has been completed. When it is not possible or practical to permanently stabilize disturbed land, temporary erosion control measures will be implemented within thirty calendar days of the exposure of soil.
 - (5) When vegetative cover will be established as a temporary or permanent erosion control measure:
 - (a) Plant species to be used and the seeding rates will take into account soil, slope, climate, and duration and use of the vegetative cover.
 - (b) Mulch will be provided at rates appropriate to ensure a minimum of soil and seed loss until an acceptable "catch" of seed is obtained.
 - (c) Reseeding will be done within a reasonable period of time if there is not an acceptable "catch".
 - (6) All development plans will incorporate building designs and street layouts that fit and utilize existing topography and desirable natural surroundings to the fullest extent possible.
- **C. Submissions**. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that adequate provision will be made to control erosion and sedimentation, including information such as the following when appropriate:
 - (1) A comprehensive erosion and sedimentation control plan, designed in accordance with the "Maine Environmental Quality Handbook", the U.S.D.A., Soil Conservation Service's "Engineering Field Manual", or another appropriate reference, which includes the following information:

- (a) A description and location of the limits of all proposed construction activities which result in the disturbance of the land.
- (b) A description and location of all existing and proposed on-site drainage.
- (c) The timing and sequence of all proposed land disturbances.
- (d) A description and location of all proposed temporary and permanent erosion and sedimentation control measures, including the timing and sequence of their completion.
- (e) A proposed program for the maintenance of all erosion and sedimentation control facilities which will remain after the project is completed, including a designation of the responsible party.
- **D.** Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer will make adequate provision to control erosion and sedimentation, such as requiring that:
 - (1) Erosion control devices be in place before the commencing of other construction activities.
 - (2) Construction activity be limited to certain times of the year, particularly when soil type, slope, and the extent of area to be stripped pose serious potential for erosion and sedimentation.

6. No Unreasonable Adverse Effect on Surface Water Quality

- **A. Preamble**. The Board recognizes that developments have the potential to cause the pollution of surface waters through both point and non-point sources of pollution.
- **B.** Scope of Review. In determining whether the proposed development will have an unreasonable adverse effect on surface water quality, the Board shall consider all relevant evidence to that effect, such as evidence that:
 - (1) The development or reasonably foreseeable consequences of the development will not discharge any water pollutants which affect the state classification of a surface water body (38 M.R.S.A. Section 363 et seq.).
 - (2) The best practicable treatment of point sources of water pollutants will be utilized.
 - (3) The total phosphorous concentrations in all tributaries to great ponds will not exceed the standard established in Department Regulation 583.1 as the result of the proposed development.
 - (4) Any effect on surface water temperature will be in compliance with all appropriate standards established in Department Regulations 582.1 582.8.
- **C. Submissions**. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on surface water quality, including information such as the following, when appropriate:

A. Preamble. The Board recognizes that the construction, operation and maintenance of developments may cause excessive noise that could degrade the health and welfare of nearby neighbors. It is the intent of the Board to require adequate provision for the control of excessive environmental noise from developments proposed after the effective date of this regulation.

B. Applicability

- (1) This regulation applies to proposed developments within municipalities without a local quantifiable noise standard and in unorganized areas of the State. When a proposed development is located in a municipality which has duly enacted by ordinance an applicable quantifiable noise standard, which (1) contains limits that are not higher than the sound level limits contained in this regulation by more than 5 dBA, and (2) limits or addresses the various types of noises contained in this regulation or all the types of noises generated by the development, that local standard, rather than this regulation, shall be applied by the Board within that municipality for each of the types of sounds the ordinance regulates. This regulation applies to developments located within one municipality when the noise produced by the development is received in another municipality and, in these cases, the Board will also take into consideration the municipalities' quantifiable noise standards, if any.
- (2) This regulation applies to expansions and modifications of developments when such expansions and modifications are proposed after the effective date of this regulation and subject to site location approval, but only to the noise produced by the proposed expansion or modification of the development, unless (1) the existing development was constructed since 1-1-70 and (2) at the time of construction, the existing development was too small to require site location approval. In situations where conditions (1) and (2) above apply, then this regulation applies to the whole development (both existing facility and proposed expansion or modification). This regulation also applies to expansions and modifications of existing developments when such expansions and modifications require an amendment to the development's Site Law permit, but only to the noise produced by the expansion or modification.
- (3) This regulation does not apply to existing developments or portions of existing developments constructed prior to 1-1-70 or approved under the Site Law prior to the effective date of this regulation. This regulation does not apply to relicensing of existing solid waste facilities previously approved under the Site Law.
- (4) The sound level limits contained in this regulation apply only to areas that are defined as protected locations, and to property lines of the proposed development or contiguous property owned by the developer, whichever are farther from the proposed development's regulated sound sources.
- (5) The sound level limits contained in this regulation do not apply to noise received within the development boundary.

NOTE: The Board will reconsider the effect and operation of the regulation one year from its effective date.



C. Sound Level Limits

- (1) Sound From Routine Operation of Developments.
 - (a) Except as noted in subsections (b) and (c) below, the hourly sound levels resulting from routine operation of the development and measured in accordance with the measurement procedures described in subsection H shall not exceed the following limits:
 - (i) At any property line of the development or contiguous property owned by the developer, whichever is farther from the proposed development's regulated sound sources:

75 dBA at any time of day.

(ii) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial;

60 dBA between 7:00 a.m. and 7:00 p.m. (the "daytime hourly limit"), and 50 dBA between 7:00 p.m. and 7:00 a.m. (the "nighttime hourly limit").

(iii) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:

70 dBA between 7:00 a.m. and 7:00 p.m. (the "daytime hourly limit"), and 60 dBA between 7:00 p.m. and 7:00 a.m. (the 'nighttime hourly limit').

- (iv) For the purpose of determining whether the use of an unzoned area is predominantly commercial, transportation, or industrial (e.g. non-residential in nature), the Department shall consider the municipality's comprehensive plan, if any. Furthermore, the usage of properties abutting each protected location shall be determined, and the limits applied for that protected location shall be based upon the usage occurring along the greater portion of the perimeter of that parcel; in the event the portions of the perimeter are equal in usage, the limits applied for that protected location shall be those for a protected location in an area for which the use is not predominantly commercial, transportation, or industrial.
- (v) When a proposed development is to be located in an area where the daytime predevelopment ambient hourly sound level at a protected location is equal to or less than 45 dBA and/or the nighttime pre-development ambient hourly sound level at a protected location is equal to or less than 35 dBA, the hourly sound levels resulting from routine operation of the development and measured in accordance with the measurement procedures described in subsection H shall not exceed the following limits at that protected location:

55 dBA between 7:00 a.m. and 7:00 p.m.

(the "daytime hourly limit"), and 45 dBA between 7:00 p.m. and 7:00 a.m. (the "nighttime hourly limit").

For the purpose of determining whether a protected location has a daytime or nighttime pre-development ambient hourly sound level equal to or less than 45 dBA or 35 dBA, respectively, the developer may make sound level measurements in accordance with the procedures in subsection H or may estimate the sound-level based upon the population density and proximity to local highways. If the resident population within a circle of 3,000 feet radius around a protected location is greater than 300 persons, or the hourly sound level from highway traffic at a protected location is predicted to be greater than 45 dBA in the daytime or 35 dBA at night (as appropriate for the anticipated operating schedule of the development), then the developer may ,estimate the daytime or nighttime pre-development ambient hourly sound level to be greater than 45 dBA or 35 dBA, respectively.

NOTE: Highway traffic noise can be predicted using the nomograph method of FHWA Highway Traffic Noise Prediction Model, FHWA-RD-77-108, December, 1978.

- (vi) Notwithstanding the above, the developer need not measure or estimate the predevelopment ambient hourly sound levels at a protected location if he demonstrates, by estimate or example, that the hourly sound levels resulting from routine operation of the development will not exceed 50 dBA in the daytime or 40 dBA at night.
- (b) If the developer chooses to demonstrate by measurement that the daytime and/or nighttime pre-development ambient sound environment at any protected location near the development site exceeds the daytime and/or nighttime limits in subsection 1(a)(ii) or 1(a)(iii) by at least 5 dBA, then the daytime and/or nighttime limits shall be 5 dBA less than the measured daytime and/or nighttime pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
- (c) For any protected location near an existing development, the hourly sound level limit for routine operation of the existing development and all future expansions of that development shall be the applicable hourly sound level limit of 1(a) or 1(b) above, or, at the developer's election, the existing hourly sound level from routine operation of the existing development plus 3 dBA.
- (d) For the purposes of determining compliance with the above sound level limits, 5 dBA shall be added to the observed levels of any tonal sounds that result from routine operation of the development.
- (e) When routine operation of a development produces short duration repetitive sound, the following limits shall apply:
 - (i) For short duration repetitive sounds, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the

development for the purposes of determining compliance with the above sound level limits.

- (ii) For short duration repetitive sounds resulting from scrap metal, drop forge and metal fabrication operations or developments which the Board determines, due to their character and/or duration, are particularly annoying or pose a threat to the health and welfare of nearby neighbors, 5 dBA shall be added to the observed levels of the short duration repetitive sounds that result from routine operation of the development for the purposes of determining compliance with the above sound level limits, and the maximum sound level of the short duration repetitive sounds shall not exceed the following limits:
- (a) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is not predominantly commercial, transportation, or industrial:

65 dBA between 7:00 a.m. and 7:00 p.m., and 55 dBA between 7:00 p.m. and 7:00 a.m.

(b) At any protected location in an area for which the zoning, or, if unzoned, the existing use or use contemplated under a comprehensive plan, is predominantly commercial, transportation, or industrial:

75 dBA between 7:00 a.m. and 7:00 p.m., and 65 dBA between 7:00 p.m. and 7:00 a.m.

- (c) The methodology described in subsection 1(a)(iv) shall be used to determine whether the use of an unzoned area is predominantly commercial, transportation, or industrial.
- (d) If the developer chooses to demonstrate by measurement that the pre-development ambient hourly sound level at any protected location near the development site exceeds 60 dBA between 7:00 a.m. and 7:00 p.m., and/or 50 dBA between 7:00 p.m. and 7:00 a.m., then the maximum sound level limit for short duration repetitive sound shall be 5 dBA greater than the measured pre-development ambient hourly sound level at the location of the measurement for the corresponding time period.
- (e) For any protected location near an existing development, the maximum sound level limit for short duration repetitive sound resulting from routine operation of the existing development and all future expansions and modifications of that development shall be the applicable maximum sound level limit of (e)(ii)(a) or (e)(ii)(b) above, or, at the developer's election, the existing maximum sound level of the short duration repetitive sound resulting from routine operation of the existing development plus 3 dBA.

NOTE: The maximum sound level of the short duration repetitive sound shall be measured using the fast response [LAFmax]. See the definition of maximum sound level.

(2) Sound From Construction of Developments

- (a) The sound from construction activities between 7:00 p.m. and 7:00 a.m. is subject to the following limits:
 - (i) Sound from nighttime construction activities shall be subject to the nighttime routine operation sound level limits contained in subsections l(a) and l(b).
 - (ii) If construction activities are conducted concurrently with routine operation, then the combined total of construction and routine operation sound shall be subject to the nighttime routine operation sound level limits contained in subsections 1(a) and 1(b).
 - (iii) Higher levels of nighttime construction sound are permitted when a duly issued permit authorizing nighttime construction sound in excess of these limits has been granted by:
 - 1. the local municipality when the duration of the nighttime construction activity is less than or equal to 90 days,
 - 2. the local municipality and the Board when the duration of the nighttime construction activity is greater than 90 days.
- (b) Sound from construction activities between 7:00 a.m. and 7:00 p.m. shall not exceed the following limits at any protected location:

Duration of Activity	Hourly Sound Level Limit
12 hours	87 dBA
8 hours	90 dBA
6 hours	92 dBA
4 hours	95 dBA
3 hours	97 dBA
2 hours	100 dBA
1 hour or less	105 dBA

(c) All equipment used in construction on development sites shall comply with applicable federal noise regulations and shall include environmental noise control devices in proper working condition, as originally provided with the equipment by its manufacturer.

(3) Sound From Maintenance Activities

- (a) Sound from routine, ongoing maintenance activities shall be considered part of the routine operation of the development and the combined total of the routine maintenance and operation sound shall be subject to the routine operation sound level limits contained in subsection 1.
- (b) Sound from occasional, major, scheduled overhaul activities shall be subject to the construction sound level limits contained in subsection 2. If overhaul activities are conducted concurrently with routine operation and/or construction activities, the combined total of the overhaul, routine operation and construction sound shall be subject to the construction sound level limits contained in subsection 2.

(4) Sound From Production Blasting

Sound exceeding the limits of subsection 1 and resulting from production blasting at a mine or quarry shall be limited as follows:

- (a) Blasting shall not occur in the period between sundown and sunrise the following day or in the period between the hours of 7:00 p.m. and 7:00 a.m., whichever is greater. In addition, no routine production blasting shall be allowed in the daytime on Sundays.
- (b) Blasting shall not occur more frequently than four times per day.
- (c) Sound from blasting shall not exceed the following limits at any protected location:

Number of Blasts Per Day	Sound Level Limit
1	129 dBL
2	126 dBL
3	124 dBL
4	123 dBL.

Blast sound shall be measured in peak linear sound level (dBL) with a linear response down to 5 Hz.

NOTE: See Bureau of Mines Report of Investigations 8485 for information on airblast sound levels and pertinent scaled distances.

(5) Exemptions

Sound associated with the following shall be exempt from regulation by the Board:

- (a) Railroad equipment which is subject to federal noise regulations.
- (b) Aircraft operations which are subject to federal noise regulations.
- (c) Registered and inspected vehicles:
 - (i) while operating on public ways, or
 - (ii) which enter the development to make a delivery or pickup and which are moving, starting or stopping, but not when they are parked for over 60 minutes in the development.
- (d) Watercraft while underway.
- (e) Residential developments, except during construction of such developments.
- (f) Bells, chimes and carillons.
- (g) occasional sporting, cultural, religious or public events allowed by the local municipality where the only affected protected locations are contained within that municipality.

- (h) The unamplified human voice and other sounds of natural origin.
- (i) Firming, fishing and aquacultural activity.
- (j) Forest management, harvesting and transportation activities.
- (k) Making, maintaining and grooming snow where the only affected protected locations are contained within the general boundaries of a ski area development.
- (1) Snow removal, landscaping and street sweeping activities.
- (m) Emergency maintenance and repairs.
- (n) Warning signals and alarms.
- (o) Safety and protective devices installed in accordance with code requirements.
- (p) Test operations of emergency equipment occurring in the daytime and no more frequently than once per week.
- (q) Boiler start-up, testing and maintenance operations occurring no more frequently than once per month.
- (r) Major concrete pours that must extend after 7:00 p.m., when started before 3:00 p.m.
- (s) Sounds from a regulated development received at a protected location when the generator of the sound has been conveyed a noise easement for that location. This exemption shall only be for the specific noise, land and term covered by the easement.
- (t) A force majeure event and other causes not reasonably within the control of the owners or operators of the development.
- (6) Noise Abatement Structures.

Noise abatement structures of a non-permanent nature in any one location for a duration of less than one year and erected for the sole purpose of noise control shall not be considered structures as defined in 38 MRSA subsection 482(6).

D. Submissions

(1) Developments with Minor Sound Impact.

An applicant for a proposed development with minor sound impact may choose to file as part of the site location application a statement attesting to the minor nature of the anticipated sound impact of their development. An applicant proposing an expansion or modification of an existing development with minor sound impact may follow the same procedure as described above. For the purpose of this regulation, a development or an expansion or modification of an existing development with minor sound impact means a development where the developer demonstrates, by estimate or example, that the regulated sound from routine operation of the development will not exceed 5 dBA less than the applicable limits

established under subsection C. It is the intent of this subsection that an applicant need not conduct sound level measurements to demonstrate that the development or an expansion or modification of an existing development will have a minor sound impact.

NOTE: Examples include subdivisions without structures, office buildings, storage buildings which will not normally be accessed at night, and golf courses.

(2) Other Developments

Technical information shall be submitted describing the applicant's plan and intent to make adequate provision for the control of sound. The applicant's plan shall contain information such as the following, when appropriate:

- (a) Maps and descriptions of the land uses, local zoning and comprehensive plans for the area potentially affected by sounds from the development.
- (b) A description of major sound sources, including tonal sound sources and sources of short duration repetitive sounds, associated with the construction, operation and maintenance of the proposed development, including their locations within the proposed development.
- (c) A description of the daytime and nighttime hourly sound levels and, for short duration repetitive sounds, the maximum sound levels expected to be produced by these sound sources at protected locations near the proposed development.
- (d) A description of the protected locations near the proposed development.
- (e) A description of proposed major sound control measures, including their locations and expected performance.
- (f) A comparison of the expected sound levels from the proposed development with the sound level limits of this regulation.
- (g) A comparison of the expected sound levels from the proposed development with any quantifiable noise standards of the municipality in which the proposed development will be located and of any municipality which may be affected by the noise.

E. Terms and Conditions

The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has made adequate provision for the control of noise from the development and to reduce the impact of noise on protected locations. Such conditions may include, but are not limited to, enclosing equipment or operations, imposing limits on hours of operation, or requiring the employment of specific design technologies, site design, modes of operation, or traffic patterns.

The sound level limits prescribed in this regulation shall not preclude the Board under Chapter 375.15 from requiring a developer to demonstrate that sound levels from a development will not unreasonably disturb wildlife or adversely affect wildlife populations. In addition, the sound level limits shall not preclude the Board, as a term or condition of approval, from requiring that

lower sound level limits be met to ensure that the developer has made adequate provision for the protection of wildlife.

F. Variance From Sound Level Limits

The Board recognizes that there are certain developments or activities associated with development for which noise control measures are not reasonably available. Therefore, the Board or Commissioner may grant a variance from any of the sound level limits contained in this rule upon (1) a showing by the applicant that he or she has made a comprehensive assessment of the available technologies for the development and that the sound level limits cannot practicably be met with any of these available technologies, and (2) a finding by the Board that the proposed development will not have an unreasonable impact on protected locations. In addition, a variance may be granted by the Board or Commissioner if (1) a development is deemed necessary in the interest of national defense or public safety and the applicant has shown that the sound level limits cannot practicably be met without unduly limiting the development's intended function, and (2) a finding is made by the Board or Commissioner that the proposed development will not have an unreasonable impact on protected locations. The Board or Commissioner shall consider the request for a variance as part of the review of a completed Site Location of Development Law application. In granting a variance, the Board or Commissioner may, as a condition of approval, impose terms and conditions to ensure that no unreasonable sound impacts will occur.

G. Definitions

Terms used herein are defined below for the purpose of this noise regulation.

- AMBIENT SOUND: At a specified time, the all-encompassing sound associated with a given
 environment, being usually a composite of sounds from many sources at many directions,
 near and far, including the specific development of interest.
- (2) CONSTRUCTION: Activity and operations associated with the development or expansion of a project or its site.
- (3) EMERGENCY: An unforeseen combination of circumstances which calls for immediate action.
- (4) EMERGENCY MAINTENANCE AND REPAIRS: Work done in response to an emergency.
- (5) ENERGY SUM OF A SERIES OF LEVELS: Ten times the logarithm of the arithmetic sum of the antilogarithms of one-tenth of the levels. [Note: See Section H(4.2).]
- (6) EXISTING DEVELOPMENT: A development constructed before 1-1-70 or a development approved under the Site Law prior to the effective date of this regulation or a proposed development for which the site location application is complete for processing on or before the effective date of this regulation. Any development with a site location approval which has been remanded to the Board by a court of competent jurisdiction for further proceedings relating to noise limits or noise levels prior to the effective date of these regulations shall not be deemed an existing development and these regulations shall apply to the existing noise sources at that development.

- (7) EXISTING HOURLY SOUND LEVEL: The hourly sound level resulting from routine operation of an existing development prior to the first expansion that is subject to this regulation.
- (8) EQUIVALENT SOUND LEVEL: The level of the mean-square A-weighted sound pressure during a stated time period, or equivalently the level of the sound exposure during a stated time period divided by the duration of the period.

NOTE: For convenience, a one hour equivalent sound level should begin approximately on the hour.

- (9) HISTORIC AREAS: Historic sites administered by the Bureau of Parks and Recreation of the Maine Department of Conservation, with the exception of the Arnold Trail.
- (10)HOURLY SOUND LEVEL: The equivalent sound level for one hour measured or computed in accordance with this regulation.
- (11)LOCALLY-DESIGNATED PASSIVE RECREATION AREA: Any site or area designated by a municipality for passive recreation that is open and maintained for public use and which:
 - (a) has fixed boundaries,
 - (b) is owned in fee simple by a municipality or is accessible by virtue of public easement,
 - (c) is identified and described in a local comprehensive plan, and
 - (d) has been identified and designated at least nine months prior to the filing of the applicant's Site Location of Development application.
- (12)MAXIMUM SOUND LEVEL: Ten times the common logarithm of the square of the ratio of the maximum sound to the reference sound of 20 micropascals. Symbol: L_{AFmax}.
- (13)MAXIMUM SOUND: Largest A-weighted and fast exponential-time-weighted sound during a specified time interval. Unit: pascal (Pa).
- (14)RESIDENCE: A building or structure, including manufactured housing, maintained for permanent or seasonal residential occupancy providing living, cooking and sleeping facilities and having permanent indoor or outdoor sanitary facilities, excluding recreational vehicles, tents and watercraft.
- (15)PRE-DEVELOPMENT AMBIENT: The ambient sound at a specified location in the vicinity of a development site prior to the construction and operation of the proposed development or expansion.
- (16)PROTECTED LOCATION: Any location, accessible by foot, on a parcel of land containing a residence or planned residence or approved residential subdivision, house of worship, academic school, college, library, duly licensed hospital or nursing home near the

development site at the time a Site Location of Development application is submitted; or any location within a State Park, Baxter State Park, National Park, Historic Area, a nature preserve owned by the Maine or National Audubon Society or the Maine Chapter of the Nature Conservancy, The Appalachian Trail, the Moosehorn National Wildlife Refuge, federally-designated wilderness area, state wilderness area designated by statute (such as the Allagash Wilderness Waterway), or locally-designated passive recreation area; or any location within consolidated public reserve lands designated by rule by the Bureau of Public Lands as a protected location.

At protected locations more than 500 feet from living and sleeping quarters within the above noted buildings or areas, the daytime hourly sound level limits shall apply regardless of the time of day.

Houses of worship, academic schools, libraries, State and National Parks without camping areas, Historic Areas, nature preserves, the Moosehorn National Wildlife Refuge, federally-designated wilderness areas without camping areas, state wilderness areas designated by statute without camping areas, and locally-designated passive recreation areas without camping areas are considered protected locations only during their regular hours of operation and the daytime hourly sound level limits shall apply regardless of the time of day.

Transient living accommodations are generally not considered protected locations; however, in certain special situations where it is determined by the Board that the health and welfare of the guests and/or the economic viability of the establishment will be unreasonably impacted, the Board may designate certain hotels, motels, campsites and duly licensed campgrounds as protected locations.

This term does not include buildings and structures located on leased camp lots, owned by the applicant, used for seasonal purposes.

For purposes of this definition, (1) a residence is considered planned when the owner of the parcel of land on which the residence is to be located has received all applicable building and land use permits and the time for beginning construction under such permits has not expired, and (2) a residential subdivision is considered approved when the developer has received all applicable land use permits for the subdivision and the time for beginning construction under such permits has not expired.

- (17)QUANTIFIABLE NOISE STANDARD: A numerical limit governing noise from developments that has been duly enacted by ordinance by a local municipality.
- (18)ROUTINE OPERATION: Regular and recurrent operation of regulated sound sources associated with the purpose of the development and operating on the development site.
- (19)SHORT DURATION REPETITIVE SOUNDS: A sequence of repetitive sounds which occur more than once within an hour, each clearly discernible as an event and causing an increase in the sound level of at least 6 dBA on the fast meter response above the sound level observed immediately before and after the event, each typically less than ten seconds in duration, and which are inherent to the process or operation of the development and are foreseeable.

- (20)SOUND COMPONENT: The measurable sound from an audibly identifiable source or group of sources.
- (21)SOUND LEVEL: Ten times the common logarithm of the square of the ratio of the frequency-weighted and time-exponentially averaged sound pressure to the reference sound of 20 micropascals. For the purpose of this regulation, sound level measurements are obtained using the A-weighted frequency response and fast dynamic response of the measuring system, unless otherwise noted.
- (22)SOUND PRESSURE: Root-mean-square of the instantaneous sound pressures in a stated frequency band and during a specified time interval. Unit: pascal (Pa).
- (23)SOUND PRESSURE LEVEL: Ten times the common logarithm of the square of the ratio of the sound pressure to the reference sound pressure of 20 micropascals.
- (24)TONAL SOUND: for the purpose of this regulation, a tonal sound exists if, at a protected location, the one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz.

Additional acoustical terms used in work associated with this regulation shall be used in accordance with the following American National Standards Institute (ANSI) standards:

ANSI S12.9-1988 - American National Standard Quantities and Procedures for Description and Measurements of Environmental Sound, Part 1;

ANSI S3.20-1973 - American National Standard Psychoacoustical Terminology;

ANSI S1.1-1960 - American National Standard Acoustical Terminology.

H. Measurement Procedures

- (1) Scope. These procedures specify measurement criteria and methodology for use, with applications, compliance testing and enforcement. They provide methods for measuring the ambient sound and the sound from routine operation of the development, and define the information to be reported. The same methods shall be used for measuring the sound of construction, maintenance and production blasting activities. For measurement of the sound of production blasting activities for comparison with the limits of subsection C(4)(c), these same methods shall be used with the substitution of the linear sound level for the A-weighted sound level.
- (2) Measurement Criteria

2.1 Measurement Personnel

Measurements shall be supervised by personnel who are well qualified by training and experience in measurement and evaluation of environmental sound, or by personnel trained to operate under a specific measurement plan approved by the Board or Commissioner.

2.2 Measurement Instrumentation

06-096

- (a) A sound level meter or alternative sound level measurement system used shall meet all of the Type 1 or 2 performance requirements of American National Standard Specifications for Sound Level Meters, ANSI S1.4-1983.
- (b) An integrating sound level meter (or measurement system) shall also meet the Type 1 or 2 performance requirements for integrating/averaging in the International Electrotechnical Commission Standard on Integrating-Averaging Sound Level Meters, IEC Publication 804 (1985).
- (c) A filter for determining the existence of tonal sounds shall meet all the requirements of-American National Standard Specification for Octave-Band and Fractional Octave-Band Analog and Digital Filters, ANSI S1.11-1986 for Order 3, Type 3-D performance.
- (d) An acoustical calibrator shall be used of a type recommended by the manufacturer of the sound level meter and that meets the requirements of American National Standard Specification for Acoustical Calibrators, ANSI S1.40-1984.
- (e) A microphone windscreen shall be used of a type recommended by the manufacturer of the sound level meter.

2.3 Calibration

- (a) The sound level meter shall have been calibrated by a laboratory within 12 months of the measurement, and the microphone's response shall be traceable to the National Bureau of Standards.
- (b) Field calibrations shall be recorded before and after each measurement period and at shorter intervals if recommended by the manufacturer.
- 2.4 Measurement Location, Configuration and Environment
- (a) Except as noted in subsection (b) below, measurement locations shall be at nearby protected locations that are most likely affected by the sound from routine operation of the development.
- (b) For determining compliance with the 75 dBA property line hourly sound level limit described in subsection C(l)(a)(i), measurement locations shall be selected at the property lines of the proposed development or contiguous property owned by the developer, as appropriate.
- (c) The microphone shall be positioned at a height of approximately 4 to 5 feet above the ground, and oriented in accordance with the manufacturer's recommendations.
- (d) Measurement locations should be selected so that no vertical reflective surface exceeding the microphone height is located within 30 feet. When this is not possible, the measurement location may be closer than 30 feet to the reflective surface, but under no circumstances shall it be closer than 6 feet.

- (e) When possible, measurement locations should be at least 50 feet from any regulated sound source on the development.
- (f) Measurement periods shall be avoided when the local wind speed exceeds 12 mph and/or precipitation would affect the measurement results.
- 2.5 Measurement Plans. Plans for measurement of pre-development ambient sound or post-development sound may be discussed with the Department staff.

(3) Measurement of Ambient Sound

3.1 Pre-Development Ambient Sound

Measurements of the pre-development ambient sound are required only when the developer elects to establish the sound level limit in accordance with subsections C(1)(b) and C(1)(e)(ii)(d) for a development in an area with high ambient sound levels, such as near highways, airports, or pre-existing developments; or when the developer elects to establish that the daytime and nighttime ambient hourly sound levels at representative protected locations exceed 45 dBA and 35 dBA, respectively.

- (a) Measurements shall be made at representative protected locations for periods of time sufficient to adequately characterize the ambient sound. At a minimum, measurements shall be made on three different weekdays (Monday through Friday) during all hours that the development will operate. If the proposed development will operate on Saturdays and/or Sundays, measurements shall also be made during all hours that the development will operate.
- (b) Measurement periods with particularly high ambient sounds, such as during holiday traffic activity, significant insect activity or high coastline waves, should generally be avoided.
- (c) At any measurement location the daytime and nighttime ambient hourly sound level shall be computed by arithmetically averaging the daytime and nighttime values of the measured one hour equivalent sound levels. Multiple values, if they exist, for any specific hour on any specific day shall first be averaged before the computation described above.

3.2 Post-Development Ambient Sound

- (a) Measurements of the post-development ambient one hour equivalent sound levels and, if short duration repetitive sounds are produced by the development, the maximum sound levels made at nearby protected locations and during representative routine operation of the development that are not greater than the applicable limits of subsection C clearly indicate compliance with those limits.
- (b) Compliance with the limits of subsection C(l)(b) may also be demonstrated by showing that the post-development ambient hourly sound level, measured in accordance with the procedures of subsection 3.1 above during routine operation of the development, does not exceed the pre-development ambient hourly sound level by more than one decibel,

and that the sound from routine operation of the development is not characterized by either tonal sounds or short duration repetitive sounds.

- (c) Compliance with the limits of subsection C(1)(e)(ii)(d) may also be demonstrated by showing that the post development maximum sound level of any short duration repetitive sound, measured in accordance with the procedures of subsection 3.1 above, during routine operation of the development, does not exceed the pre-development ambient hourly sound level by more than five decibels.
- (d) .If any of the conditions in (a), (b) or (c) above are not met, compliance with respect to the applicable limits must be determined by measuring the sound from routine operation of the development in accordance with the procedures described in subsection 4.
- (4) Measurement of the Sound from Routine Operation of Developments.

4.1 General

- (a) Measurements of the sound from routine operation of developments are generally necessary only for specific compliance testing purposes in the event that community complaints result from operation of the development, for validation of an applicant's calculated sound levels when requested by the Board or Commissioner, for determination of existing hourly sound levels for an existing development or for enforcement by the Department.
- (b) Measurements shall be obtained during representative weather conditions when the development sound is most clearly noticeable. Preferable weather conditions for sound measurements at distances greater than about 500 feet from the sound source include overcast days when the measurement location is downwind of the development and inversion periods (which most commonly occur at night).
- (c) Measurements of the development sound shall be made so as to exclude the contribution of sound from development equipment that is exempt from this regulation.
- 4.2 Measurement of the Sound Levels Resulting from Routine Operation of the Development.
- (a) When the ambient sound levels are greater than the sound level limits, additional measurements can be used to determine the hourly sound level that results from routine operation of the development. These additional measurements may include diagnostic measurements such as measurements made close to the development and extrapolated to the protected location, special checkmark measurement techniques that include the separate identification of audible sound sources, or the use of sound level meters with pause capabilities that allow the operator to exclude non-development sounds.
- (b) For the purposes of computing the hourly sound level resulting from routine operation of the development, sample diagnostic measurements may be made to obtain the one hour equivalent sound levels for each sound component.
- (c) Identification of tonal sounds produced by the routine operation of a development for the purpose of adding the 5 dBA penalty in accordance with subsection C(l)(d) requires

06-096

aural perception by the measurer, followed by use of one-third octave band spectrum analysis instrumentation. If one or more of the sounds of routine operation of the development are found to be tonal sounds, the hourly sound level component for tonal sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds.

- (d) Identification of short duration repetitive sounds produced by routine operation of a development requires careful observations. For the sound to be classified as short duration repetitive sound, the source(s) must be inherent to the process or operation of the development and not the result of an unforeseeable occurrence. If one or more of the sounds of routine operation of the development are found to be short duration repetitive sounds, the hourly sound level component for short duration repetitive sounds shall be computed by adding 5 dBA to the one hour equivalent sound level for those sounds. If required, the maximum sound levels of short duration repetitive sounds shall be measured using the fast response [LAFmax]. The duration and the frequency of occurrence of the events shall also be measured. In some cases, the sound exposure levels of the events may be measured. The one hour equivalent sound level of a short duration repetitive sound may be determined from measurements of the maximum sound level during the events, the duration and frequency of occurrence of the events, and their sound exposure levels.
- (e) The daytime or nighttime hourly sound level resulting from routine operation of a development is the energy sum of the hourly sound level components from the development, including appropriate penalties, (see (c) and (d) above). If the energy sum does not exceed the appropriate daytime or nighttime sound level limit, then the development is in compliance with that sound level limit at that protected location.
- (5) Reporting Sound Measurement Data. The sound measurement data report should include the following:
 - (a) The dates, days of the week and hours of the day when measurements were made.
 - (b) The wind direction and speed, temperature, humidity and sky condition.
 - (c) Identification of all measurement equipment by make, model and serial number.
 - (d) The most recent dates of laboratory calibration of sound level measuring equipment.
 - (e) The dates, times and results of all field calibrations during the measurements.
 - (f) The applicable sound level limits, together with the appropriate hourly sound levels and the measurement data from which they were computed, including data relevant to either tonal or short duration repetitive sounds.
 - (g) A sketch of the site, not necessarily to scale, orienting the development, the measurement locations, topographic features and relevant distances, and containing sufficient information for another investigator to repeat the measurements under similar conditions.
 - (h) A description of the sound from the development and the existing environment by character and location.

- (iii) Shade trees will be highcrowned species with ascending or lateral branching habit indigenous to the area, tolerant to existing soils and urbanized conditions, two-inch minimum caliper measured six inches up from the base, and planted a maximum of 30' on center.
- (iv) Flowering and evergreen trees will be a minimum of 7' tall and planted a maximum of 20' on center.
- (v) Selections for ground cover will reflect the project's function, expected foot traffic, exposure, and maintenance program.
- (f) Provisions will be made to supply water to planted islands and other vegetated areas.
- (4) The plans for the proposed development provide for the preservation of existing elements of the development site which contribute to the maintenance of scenic character.
- C. Submissions. Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on the scenic character of the surrounding area, including information such as the following, when appropriate:
 - (1) Sketches of the proposed development indicating how the development fits into the scenic character of the area.
 - (2) Landscaping plans for minimizing the visual impact of the parking lots, mining operations and other types of developments.
- **D.** Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will have no unreasonable adverse effect on scenic character, such as requiring that:
 - (1) Illumination of the development be limited.
 - (2) Vegetative or architectural screens be established.



15. Protection of Wildlife and Fisheries

- **A. Preamble**. The Board recognizes the need to protect wildlife and fisheries by maintaining suitable and sufficient habitat and the susceptibility of certain species to disruption and interference of lifecycles by construction activities.
- **B.** Scope of Review. In determining whether the developer has made adequate provision for the protection of wildlife and fisheries, the Board shall consider all relevant evidence to that effect, such as evidence that:
 - (1) A buffer strip of sufficient area will be established to provide wildlife with travel lanes between areas of available habitat.

- (2) Proposed alterations and activities will not adversely affect wildlife and fisheries lifecycles.
- (3) There will be no unreasonable disturbance to:
 - (a) High and moderate value deer wintering areas;.
 - (b) Habitat of any species declared threatened or endangered by the Commissioner, Maine Department of Inland Fisheries and Wildlife or the Director of the U.S. Fish and Wildlife Service;
 - (c) Seabird nesting islands;
 - (d) Significant vernal pools;
 - (e) High and moderate value waterfowl and wading bird habitat; and
 - (f) Shorebird nesting, feeding, and staging areas.
- **C. Submissions.** Applications for approval of proposed developments shall include evidence that affirmatively demonstrates that the developer has made adequate provision for the protection of wildlife and fisheries, including information such as the following, when appropriate:
 - (1) The location of natural buffer strips and adequate provision for their maintenance.
 - (2) Plans to mitigate adverse effects on wildlife and fisheries through means that at a minimum include, but are not limited to, design considerations, pollution-abatement practices, the timing of construction activities, and on-site or off-site habitat improvements or preservation.
- **D.** Terms and Conditions. The Board may, as a term or condition of approval, establish any reasonable requirement to ensure that a developer has made adequate provision for the protection of wildlife and fisheries.

After public notice and public hearings held on June 14 and 15, 1979, the above regulations are hereby adopted this 8th day of August, 1979.

AUTHORITY:

38 M.R.S.A., Section 343

EFFECTIVE DATE:

November 1, 1979

Section 10 Amended: November 21, 1989

Section 9 Amended: June 12, 1991 Section 9 Amended: September 22, 2001 Section 15 Amended: January 18, 2006

BASIS STATEMENT

These regulations are intended to explain and clarify the meaning of the No Adverse Environmental Effect Standard of the Site Location Law (38 M.R.S.A., Section 484(3)) and to set out the duties, powers,

Financial capacity

- A. <u>Estimated costs</u>. Specify the estimated total cost of the development and itemize the estimated major expenses, including the projected cost of measures taken to minimize or prevent adverse effects on the environment during construction and operation. The itemization of major costs may include, but not be limited to, the cost of the following activities: land purchase, roads, sewers, structures, water supply, erosion control, pollution abatement and landscaping.
- B. <u>Financing</u>. Provide one of the following unless otherwise approved by the department.
 - (1) <u>Letter of commitment to fund</u>. A letter of commitment, acceptable to the department, from a financial institution, governmental agency, or other funding agency indicating a commitment to provide a specified amount of funds, and specifying how those funds will be used.

(2) Self-financing

- (a) Annual report. The most recent corporate annual report indicating availability of liquid assets to finance the development, together with explanatory material interpreting the report; or
- (b) <u>Bank statement</u>. Copies of bank statements or other evidence indicating availability of funds if the applicant will personally finance the development.

[Note: if self-financing of the project is proposed, provide evidence that the available funds are earmarked specifically for the cost of the development.]

- (3) Other. If funding is required, but a final commitment of all necessary money cannot be made until all approvals are received and other reasonable conditions are met, provide the following.
 - (a) <u>Cash equity commitment</u>. Cash equity commitment to the development sufficient to demonstrate the applicant's ability to go forward. The department will consider 20 percent equity of the total cost of a development as the normal equity commitment but reserves the right to lower or raise this amount if special circumstances of an individual development warrant it.
 - (b) Financial plan. Financial plan for the remaining financing.

- (c) <u>Letter</u>. Letter acceptable to the department from an appropriate financial institution indicating an intention to provide financing subject to reasonable conditions of acceptance.
- (4) <u>Affordable housing information</u>. If the development is to provide affordable housing, include in this section, for each unit or lot to be leased, rented or sold, the number of bedrooms per unit or lot and the not-to-be exceed rental/selling price of each unit/lot. Also include the median income in the county where the development is located, and data to substantiate that a person with that income could obtain a mortgage for a unit at that selling price.

Reference: Financial Capacity Standard of the Site Location Law, 06-096 CMR 373.1.

C. <u>Certificate of Good Standing</u>. If new applicant is a registered corporation, provide either a *Certificate of Good Standing* (available from the Secretary of State) or a statement signed by a corporate officer affirming that the corporation is in good standing.

[Supplemental Requirements for Wind Energy Developments Only]:



Section 26. Shadow flicker. Provide a detailed model of the wind energy development that demonstrates that the project has been designed to avoid unreasonable adverse shadow flicker effect. The shadow flicker model must utilize the WindPro software or other modeling software as approved by

[Note: Shadow flicker caused by wind turbines is defined as alternating changes in light intensity caused by the moving blade casting shadows on the ground and stationary objects, such as a window at a dwelling. No flicker shadow will be cast when the sun is obscured by clouds/fog or when the turbine is not rotațing. Shadow flicker is not the sun seen through a rotating wind turbine rotor nor what an individual might view moving through the shadows of a wind farm. The spatial relationships between a wind turbine and receptor, as well as wind direction are key factors related to shadow flicker duration. At distances of greater than 1,000 feet between wind turbines and receptors, shadow flicker usually only occurs at sunrise or sunset when the cast shadows are sufficiently long. For situations where the rotor plane is in-line with the sun and receptor (as seen from the receptor), the cast shadows will be very narrow (blade thickness), of low intensity, and will move quickly past the stationary receptor. When the rotor plane is perpendicular to the sun-receptor "view line", the cast shadow of the blades will move within a circle equal to the turbine

Section 27. Public Safety. Provide documentation in the form of a site plan and a certificate of design provided by the manufacturer of the generating facility that document that the proposed wind energy development has been designed to conform to applicable industry standards and that the proposed wind energy development will not present an unreasonable safety hazard to adjacent properties or adjacent property uses. Documentation provided by the applicant must include, but is not limited to, the following:

1. Design Safety Certification: Evidence that the turbine design meets acceptable safety standards; such evidence may include submission of certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanishcer Llloyd Wind Energies, or other similar certifying organizations.

2. Overspeed Control: Evidence from the manufacturer or other licensed civil engineer describing the design and function of overspeed control (i.e. aerodynamic overspeed controls such as variable pitch and mechanical brakes) and related safety mechanisms that are part of the turbine

3. Public Safety-related Setback: Evidence that the wind turbines have been sited with appropriate safety related setbacks from adjacent properties and adjacent existing uses; such evidence shall include a site plan and applicable documentation as necessary to show that the proposed wind generation facility turbines have been sited in such a manner as to provide a minimum set back from the nearest property line. The recommended minimum setback is a distance of not less than the normal setback requirements for that zoning classification as dictated by the local municipal zoning ordinance or 1.5 times the maximum turbine blade height, whichever is greater. The setback distance must be measured to the center of the wind turbine base.

The recommended minimal setbacks do not apply if the applicant has obtained a waiver of such setbacks from the affected landowner. Alternatively, the applicant may submit evidence (i.e. operating protocols, safety programs, recommendation of a licensed professional engineer with appropriate expertise and experience with wind turbines, or relevant manufacturer recommendations) that a reduced setback is appropriate.

Section 28. Tangible Benefits Provide a narrative description of the tangible benefits that the proposed wind energy development is expected to bring to the region, with particular attention to the benefits to the host community and the surrounding area.

[Note: "Tangible benefits" means environmental or economic improvements attributable to the construction, operation and maintenance of an expedited wind energy development, including but not limited to: construction-related employment; local purchase of materials; employment in operations and

1122

maintenance; reduced property taxes; reduced electrical rates; natural resource conservation; performance of construction, operations and maintenance activities by trained, qualified and licensed workers in accordance with Title 32, chapter 17 and other applicable laws; or other comparable benefits, with particular attention to assurance of such benefits to the host community to the extent practicable and affected neighboring communities.]

Pursuant to 35-A MRSA § 3402 (1) an applicant may assume that the wind energy resources of the State constitute a valuable indigenous and renewable energy resource and that wind energy development, which is unique in its benefits to and impacts on the natural environment, makes a significant contribution to the general welfare of the citizens of the State for the following reasons:

- 1. Wind energy is an economically feasible, large-scale energy resource that does not rely on fossil fuel combustion or nuclear fission, thereby displacing electrical energy provided by these other sources and avoiding air pollution, waste disposal problems and hazards to human health from emissions, waste and by-products; consequently, wind energy development may address energy needs while making a significant contribution to achievement of the State's renewable energy and greenhouse gas reduction objectives, including those in Title 38, section 576; and
- 2. At present and increasingly in the future with anticipated technological advances that promise to increase the number of places in the State where grid-scale wind energy development is economically viable, and changes in the electrical power market that favor clean power sources, wind energy may be used to displace electrical power that is generated from fossil fuel combustion and thus reduce our citizens' dependence on imported oil and natural gas and improve environmental quality and state and regional energy security.

The applicant shall provide additional information, as necessary, to demonstrate that the proposed wind energy development provides tangible environmental or economic benefits that could be realized by the host community (town or county), or which would have broader benefits for the region or state.

Examples of activities that may constitute a tangible benefit include, but are not limited to:

- <u>Natural resource conservation</u> Applicants are encouraged to consider the conservation of lands near or adjacent to the project site as evidence of tangible benefits. Lands near the project site, or with characteristics similar to the project site, are generally preferred.
- <u>Direct job creation</u> An estimate of temporary and permanent jobs associated with construction and operation of the project, and a statement describing plans to hire Maine companies and/or to hire and train local residents.
- <u>Direct economic benefits</u> An estimate of the direct economic benefits of the project including spending on goods and services.
- <u>Indirect economic benefits</u> An estimate of the indirect economic benefits of the project resulting from construction and operation of the project.
- Recreation A description of any plans for coordination with recreationalists for use of the land where the project would be located.

The demonstration of tangible benefits does not include projects being done for other required mitigation, such as for wetland impacts.



Section 29. Decommissioning Plan The applicant must provide a plan for decommissioning the project if that becomes necessary. The decommissioning plan shall include but is not limited to the following:

1. A description of the trigger for implementing the decommissioning plan. There is a rebuttable presumption that decommissioning is required if no electricity is generated for a continuous period of twelve (12) months. The applicant may rebut the presumption by providing evidence, such as a force majeure event that interrupts the generation of electricity, that although the project has not

generated electricity for a continuous period of 12 months, the project has not been abandoned and should not be decommissioned.

2. A description of the work required to physically remove all wind turbines, associated foundations to a depth of 24 inches, buildings, cabling, electrical components, and any other associated facilities to the extent they are not otherwise in or proposed to be placed into productive use. All earth disturbed during decommissioning must be graded and re-seeded, unless the landowner of the affected land requests otherwise in writing.

[Note: At the time of decommissioning, the applicant may provide evidence of plans for continued beneficial use of any or all of the components of the wind energy development. Any changes to the approved decommissioning plan shall be approved as a minor amendment to the department license for the wind energy development.]

- 3. An estimate of the total cost of decommissioning less salvage value of the equipment and itemization of the estimated major expenses, including the projected costs of measures taken to minimize or prevent adverse effects on the environment during implementation of the decommissioning plan. The itemization of major costs may include, but is not limited to, the cost of the following activities: turbine removal, turbine foundation removal and permanent stabilization, building removal and permanent stabilization, transmission corridor removal and permanent stabilization and road infrastructure removal and permanent stabilization.
- 4. Demonstration in the form of a performance bond, surety bond, letter of credit, parental guarantee or other form of financial assurance as may be acceptable to the department that upon the end of the useful life of the wind generation facility the applicant will have the necessary financial assurance in place for 100% of the total cost of decommissioning, less salvage value. The applicant may propose securing the necessary financial assurance in phases, as long as the total required financial assurance is in place a minimum of 5 years prior to the expected end of the useful life of the wind generation equipment.



Section 30. Generating facility-Visual Quality and Scenic Character Provide an evaluation of the effect of the generating facility on scenic resources of state or national significance that are located within 3 miles of a turbine, unless the department determines that an evaluation is not required. In determining whether a visual impact assessment is required, the department shall consider the following:

- · Significance of the affected scenic resource;
- Existing character of the surrounding area;
- Expectations of the typical viewer;
- Project purpose and context;
- Extent, nature, and duration of the potentially affected public uses of the scenic resource and the
 potential effect of the generating facility's presence on the publics' continued use and enjoyment
 of the scenic resource.
- Scope and scale of the potential effect of views of the generating facility on the scenic resources
 of state or national significance, including but not limited to issues related to the number and
 extent of turbines visible from the scenic resource, the distance from the scenic resource and the
 effect of prominent features of the development on the landscape.

[Note: The requirements of this section govern the visual and scenic impacts of the "generating facilities" and therefore the application requirements in "Section 6. Visual Quality and Scenic Character" do not apply to generating facilities. "Generating facilities" means wind turbines and towers and transmission lines, not including generator lead lines, that are immediately associated with the wind turbines. The "associated facilities," which include elements of a wind power project other than its generating facilities, are subject to the requirements in Section 6 if the department concludes that reviewing them under this Section 30 would result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities. The department will make a determination on whether the

applicant must submit information on associated facilities consistent with the requirements of Section 6 or Section 30 within 30 days of when the application is accepted for processing.]

"Scenic resource of state or national significance" means an area or place owned by the public or to which the public has a legal right of access that is:

- A. A national natural landmark, federally designated wilderness area or other comparable outstanding natural and cultural feature, such as the Orono Bog or Meddybemps Heath;
- B. A property listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, including, but not limited to, the Rockland Breakwater Light and Fort Knox;
- C. A national or state park;
- D. A great pond that is:
 - One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; or
 - One of the 280 great ponds in the State's unorganized or deorganized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987;
- E. A segment of a scenic river or stream identified as having unique or outstanding scenic attributes listed in Appendix G of the "Maine Rivers Study" published by the Department of Conservation in 1982:
- F. A scenic viewpoint located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that the Department of Conservation designates by rule adopted in accordance with section 3457;
- G. A scenic turnout constructed by the Department of Transportation pursuant to Title 23, section 954 on a public road that has been designated by the Commissioner of Transportation pursuant to Title 23, section 4206, subsection 1, paragraph G as a scenic highway; or
- H. Scenic viewpoints located in the coastal area, as defined by Title 38, section 1802, subsection 1, that are ranked as having state or national significance in terms of scenic quality in:
 - One of the scenic inventories prepared for and published by the Executive Department, State Planning Office: "Method for Coastal Scenic Landscape Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to South Thomaston," Dominie, et al., October 1987; "Scenic Inventory Mainland Sites of Penobscot Bay," Dewan and Associates, et al., August 1990; or "Scenic Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands," Dewan and Associates, June 1992; or
 - 2. A scenic inventory developed by or prepared for the Executive Department, State Planning Office in accordance with section 3457.

In order to determine the effects on scenic character and existing uses related to scenic character, the visual impact assessment must include, but is not limited to:

- Locations and descriptions of scenic resources of state or national significance that are within 3 miles of the development area;
- The locations and descriptions of scenic resources of state or national significance between 3 and 8 miles of the development area, if the department finds there is substantial evidence that the pertinent resource is significant and there is a potential for a significant adverse effect.
- The effect of the project on the affected scenic resources of state or national significance with respect to the five criteria listed above and the standards set forth in 34-A MRSA Section 3452.